

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Andrew P. Neumayer,

Plaintiff,

vs.

Philadelphia Indemnity Insurance Company,
Primary Color Child Care Center, Jocelyn
Knox DeMartelare, and Asia N. Partman,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2015-CP-40-7254

AMENDED ORDER GRANTING
PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT, AND DENYING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

RECEIVED

AUG 17 2016

SC Court of Appeals

RICHLAND COUNTY
FILED
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THE W. H. BRIDGE
& G.S.

I. INTRODUCTION

This is a declaratory judgment action. This matter came before the Court upon the Plaintiff's Motion for Summary Judgment, as well as Defendant Philadelphia Indemnity Insurance Company's Motion for Summary Judgment, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. A hearing was held before me at the Richland County Judicial Center on May 18, 2016. Rowland P. Alston III and Jerry Reardon appeared on behalf of the Plaintiff. Curtis Dowling and Matthew Gerrald appeared on behalf of the Defendant Philadelphia Indemnity Insurance Company ("Philadelphia"). After carefully considering the arguments of counsel, I hereby GRANT Plaintiff's Motion for Summary Judgment, and DENY Philadelphia's Motion for Summary Judgment.

II. STATEMENT OF THE CASE

On January 25, 2013, Plaintiff Andrew P. Neumayer ("Plaintiff") was a pedestrian on Julius Felder Street in Cayce, South Carolina, when he was struck by a bus operated by Defendant Asia N. Partman ("Partman") and owned by Defendant Primary Colors Child

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Care Center ("Primary Colors"). He sustained very significant personal injury, and his medical specials totaled over \$122,000.00.

On November 8, 2013, Plaintiff filed suit against Partman and Primary Colors, alleging negligence against Partman in the operation of the bus and against Primary Colors for the acts of its agent Partman. (See Andrew P. Neumayer v. Asia N. Partman and Primary Colors Child Care Center, 2013-CP-40-6839; hereinafter "Tort Action.") Primary Colors did not answer or appear in the Tort Action, and went into default. A damages hearing was held before the Hon. James R. Barber on April 3, 2014. Primary Colors was given notice and did not appear. After considering the testimony and evidence, the Court entered judgment against defendants in the amount of \$622,500.00 on April 7, 2014.

Defendant Philadelphia, a liability carrier, issued an automobile liability policy ("Policy") with Primary Colors as the named insured that was in effect on the date of the accident and that provided coverage with limits of \$1,000,000.00. When Plaintiff presented the judgment to Philadelphia, Philadelphia refused to satisfy the judgment in full for the Tort Action based on alleged lack of cooperation from Primary Colors in failing to provide timely notice of the suit.

Plaintiff then filed this declaratory judgment action as a result on December 4, 2015, seeking an order that Philadelphia satisfy the judgment in full.

After granting Plaintiff summary judgment and entering an order, Philadelphia timely served a motion to alter or amend. This Amended Order is entered in response to that motion.

have provisions affording coverage for named insureds and their permissive operators, and, that any relevant policy provision which effectively reduces coverage is void. The statute reads in part:

§ 38-77-142. Policies or contracts of bodily injury or property damage liability insurance covering liability; required provisions.

(C) Any endorsement, provision, or rider attached to or included in any policy of insurance which purports or seeks to limit or reduce the coverage afforded by the provisions required by this section is void.

Philadelphia's application of a policy provision that reduces coverage is a clear violation of this statute. This is supported by a plain reading of the statute, and the Court's understanding of the case of Williams v. GEICO, 762 S.E.2d 705 (S.C. 2014). There, a provision that reduced coverage for family members violated the public policy of the State as codified in §38-77-142 and was found to be void. The Court stated that "it is the face amount of the coverage that is relevant under §38-77-142, not the statutory minimum limits of liability coverage set forth in §38-77-140, which are not even mentioned in the statute." Id., at 714. Further, it found that "the clear terms of section 38-77-142 are controlling of this state's public policy and justify the result we reach today." Id., at 716.

Here, Philadelphia is not claiming that it does not have a duty to indemnify or provide coverage at all. Rather, it claims that coverage only extends to the limit of the statutory minimum because of a provision in the Policy, reducing the available coverage from \$1,000,000.00 to \$25,000.00. But, under the plain language of §38-77-142 and in Williams, coverage in auto liability policies cannot be reduced by this or any such provision, and the statutory minimum is irrelevant. If Philadelphia has an indemnification obligation, then its obligation extends to the limits of coverage on the Policy.

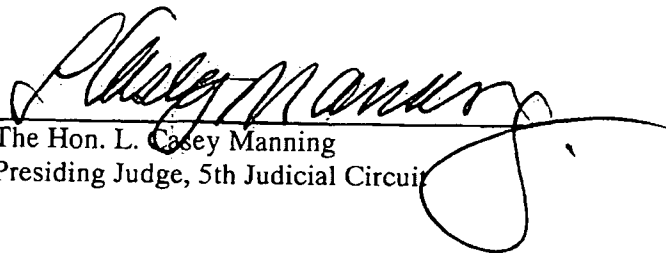
Philadelphia cites USAA v. Markosky, 530 S.E.2d 660 (S.C. Ct.App. 2000) for the proposition that coverage may be reduced to the statutory minimum in these circumstances. However, as the Court noted in Williams, that case involved an accident that occurred prior to March 1, 1999, the effective date of §38-77-142, and was not controlling. See Williams, supra, at 714. Thus, it is also not controlling in this case.

Where the terms of a statute are clear, the Court must apply those terms according to their literal meaning. Collins v. Doe, 574 S.E.2d 739 (S.C. 2002) (where a statute's language is plain and unambiguous, and conveys a clear and definite meaning, the court has no right to look for or impose other meaning). And, "statutory provisions relating to an insurance contract are part of the contract as a matter of law. To the extent a policy provision conflicts with an applicable statutory provision, the statute prevails." Nakatsu v. Encompass Indemnity Co., 700 S.E.2d 283, 287 (S.C. Ct.App. 2010), quoting State Farm Mut. Auto. Ins. Co v. Calcutt, 530 S.E.2d 896, 897 (S.C. Ct.App. 2000).

A plain reading of §38-77-142 (C) clearly mandates that any relevant provision in any automobile insurance policy attempting to reduce the coverage available is void. Philadelphia rests upon such a provision and one that effectively does just that. But that provision is unavailable to Philadelphia and is void as a matter of law in this case. Section 38-77-142 (C) prevails.

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that Plaintiff's Motion for Summary Judgment is GRANTED, and Philadelphia's Motion for Summary Judgment is DENIED.

AND IT IS SO ORDERED.


The Hon. L. Casey Manning
Presiding Judge, 5th Judicial Circuit

Columbia, South Carolina
July 26, 2016

2015-CP-40-7254

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2015CP4007254

Andrew P Neumayr

Philadelphia Indemnity Insurance Company

Primary Colors Care Center

PLAINTIFF(S)

DEFENDANT(S)

RECEIVED

AUG 17 2015

Submitted by:

SC Court of Appeals

Attorney for : Plaintiff Defendant or Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**
 - Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 - Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON):**
 - Rule 40(j), SCRPC; Bankruptcy;
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 - Affirmed; Reversed; Remanded; Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 3 day of Aug, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Rowland P. Alston III

Gerald Eugene Reardon

Curtis W. Dowling

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. McBride

SCANNED

FILED
RICHLAND COUNTY
AUG -2 2015
PM 1:29
W. T. BRIDGES
& G. S. RYAN
JUDICIAL CLERK